

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8651 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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JITENDRA @ JITU BAKARI DEVJIBHAI KOTIYA

Versus

DISTRICT MAGISTRATE

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Appearance:

MR YOGESH S LAKHANI for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner challenges the Order of preventive detention dated 21st August, 1999 made against him by the District Magistrate, Porbandar under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat

Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. Alongwith the order of detention, the petitioner was served with the grounds of detention also. On perusal of the grounds of detention, it appears that the petitioner was serving as a Police Constable. On 23rd July, 1999, he was found to be in possession of a large quantity of English liquor for which a prohibition offence has been registered against him at Kamlabaug Police Station in Porbandar. Pursuant to the said offence registered against the petitioner, he was placed under suspension on 24th July, 1999 and has been detained in custody vide aforesaid order dated 21st August, 1999. The petitioner is held to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of 'public order' within the meaning of Section 3 (4) of the Act and the explanation thereto.

4. The order of detention has been challenged on many grounds. However, the one that requires consideration is in respect of the alternative preventive measure that could have been resorted to by the detaining authority. It is contended that the detaining authority could have proceeded against the petitioner under Section 56 of the Bombay Police Act, however, it has not considered the same. Section 56 of the Bombay Police Act empowers the Commissioner of Police, the District Magistrate or the Sub-Divisional Magistrate authorised by the State Government in that behalf, to order removal of a person who is about to commit offence from the given area. The Detaining Authority has considered the possibility of externment of the petitioner under Section 57 [1][A](ii) (c) of the Bombay Police Act, 1951. The said provision empowers, inter alia, the detaining authority to order removal of a person convicted twice of an offence within a period of three years under any of the provisions of the Bombay Police Act, 1951. There being no previous conviction of the petitioner, the detaining authority could not exercise the power under Section 57, however, as observed hereinabove, he could have as well exercised the power of externment under Section 56 of the Bombay Police Act, 1951. Thus, evidently the detaining authority has failed to consider whether the petitioner could have been prevented from repeating anti-social activities by order of externment under Section 56 of the Bombay Police Act, 1951. The order of detention, therefore, suffers from the vice of non-application of mind to the aforesaid extent. In view of the prevailing law, such an infirmity shall be fatal

to the order of detention. The same, therefore, requires to be quashed and set-aside.

5. Petition is allowed. The impugned order dated 21st August, 1999 is quashed and set-aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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Prakash\*